



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2003 Assembly Bill 726	Assembly Amendment 1
<i>Memo published: March 4, 2004</i> <i>Contact: Rachel Letzing, Staff Attorney (266-3370)</i>	

Current law provides that a plaintiff in a lawsuit alleging that an activity or use of property is a nuisance may proceed on the grounds that the alleged nuisance is either public or private. A nuisance is an unreasonable activity or use of property that interferes substantially with the enjoyment of life, health, or safety of another person.

Also under current law, cities, villages, towns authorized to exercise village powers, certain other towns, and counties are authorized to enact zoning ordinances that restrict the height, number of stories, and size of buildings or other structures, the percentage of a lot that may be occupied, the size of yards or other open spaces, the density of population, the location and use of buildings, structures, and land for various purposes, and the areas within which activities such as agriculture, forestry, and mining may be conducted.

Assembly Bill 726 provides that a forestry operation is not a nuisance if the forestry operation conforms to generally accepted forestry management practices. The bill defines “generally accepted forestry management practices” as forestry management practices that maximize the sound management of a forest, as determined by the Department of Natural Resources (DNR) by rule. The bill provides the following examples of forestry operations that are not a nuisance if conducted in conformance with generally accepted forestry management practices:

1. Removal of vegetation, dead or live trees, bark, foliage, or wood resulting in visual changes in a forest.
2. Noise from forestry equipment.
3. Removal of vegetation, dead or live trees, bark, foliage, or wood from a forest adjoining another person’s property.
4. Use of chemicals normally used in a forestry operation.

The bill further provides that this protection applies regardless of any of the following:

1. A change in ownership or size of a forest.
2. Cessation or interruption of forestry practices.
3. Enrollment of all or part of the forest in governmental forestry or conservation programs.
4. Adoption of new forest technology.

If the defendant forestry operation prevails in a nuisance action, the bill specifies that the court may award the defendant the actual and necessary costs the defendant incurred in the action and reasonable attorney fees.

The bill also provides that cities, villages, towns authorized to exercise village powers, certain other towns, and counties may not enact a zoning ordinance that prohibits forestry operations that are in accordance with generally accepted forestry management practices, as defined in the bill.

Assembly Substitute Amendment 1 makes the following changes to the bill:

1. Defines a “forestry operation” to mean any activity related to the harvesting, reforestation, and other forest management activities, including thinning, pest control, fertilization, and wildlife management. The bill does not include a definition of “forestry operation.”
2. Changes the definition of “generally accepted forestry management practices” provided in the bill to “forestry management practices that *promote* sound management of a forest, as determined by the Department of Natural Resources by rule.”
3. Deletes the section of the bill which provides examples of forestry operations that are not a nuisance if conducted in conformance with generally accepted forestry management practices.
4. Specifies that a forestry operation that conforms to generally accepted forestry management practices is not a nuisance *as a result* of any of the following:
 - a. Change in ownership or size of a forest.
 - b. Cessation or interruption of forestry practices.
 - c. Enrollment of all or part of the forest in governmental forestry or conservation programs.
 - d. Adoption of new forest technology.

Legislative History

The Assembly Committee on Forestry held a public hearing on Assembly Bill 726 on January 6, 2004, but did not take executive action at that time. On February 17, 2004, the committee held a second public hearing on the bill. On the same date, the committee recommended passage of Assembly Bill 726 on a vote of Ayes, 6; Noes, 0.

Assembly Amendment 1 was offered by Representatives Seratti, Friske, Ainsworth, M. Williams, Hubler, and Boyle on February 23, 2004.

On March 2, 2004, the Assembly adopted Assembly Amendment 1 on a voice vote, and passed the bill, as amended, also on a voice vote.